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TAGS: [ECON](#) [ETRD](#) [PHUM](#) [SOCI](#) [EAID](#) [EAIR](#) [CE](#)

SUBJECT: MCC IN SRI LANKA: MAJORITY OF INDICATORS PROBABLY NOW
BELOW INTERNATIONAL STANDARDS

REF: A) 2006 COLOMBO 1732 (SCORECARD DELIVERED), B) 2006 COLOMBO

1993 (LACK OF DESIRE FOR PEACE MAY IMPEDE ECONOMIC GROWTH), C) 2006
COLOMBO 2096 (ECONOMIC LEADERS MUST FOCUS ON DEFENSE), D) 2006
COLOMBO 2119 (CORRUPTION WORSENING IN SRI LANKA), E) 2006 COLOMBO
2127 (SRI LANKA LOSES HALF OF GERMAN TSUNAMI AID), F) 2006 COLOMBO
2142 (HUMAN RIGHTS GROUPS VOICE CONCERN), G) 2006 COLOMBO 2063 (SRI
LANKA FY2007 BUDGET), H) COLOMBO 82 (2007 INVESTMENT CLIMATE
STATEMENT), I) COLOMBO 100 (NGOS FACE CLIMATE OF INTIMIDATION)

1. (SBU) SUMMARY AND ACTION REQUEST: Almost three years ago when
Sri Lanka qualified as a Millennium Challenge Account candidate
country, many of Sri Lanka's MCC indicators were on a positive
trend. Since then, the government has changed hands twice and each
new government has proven less committed to the MCC principles of
ruling justly, investing in people, and advancing economic freedom.
The indicators MCC uses to measure these principles have begun to
show declines for Sri Lanka, but the latest indicators do not yet
reflect the serious deterioration that occurred in 2006. Post
continues to support concluding an MCC Compact for Sri Lanka
provided the GSL reverses this negative trend. We recommend that
the MCC inform the government of the USG's concern about the
deterioration in a majority of the key areas tracked by MCC
indicators and the need for Sri Lanka to take steps to rectify these
so a compact can be concluded as soon as possible. End Summary and
Action Request.

RULING JUSTLY: ALL MEASUREMENTS SLIDING

2. (SBU) RELEVANT LEGISLATION AND SRI LANKA'S POSSIBLE FAILURE:
Section 607 of the Millennium Challenge Act of 2003 requires that a
country demonstrate a commitment to just and democratic governance,
including a demonstrated commitment to (A) promote political
pluralism, equality and the rule of law; (B) respect human and civil
rights, including the rights of people with disabilities; (C)
protect private property rights; (D) encourage transparency and
accountability of government; and (E) combat corruption." While Sri
Lanka's MCC scorecard indicates that Sri Lanka "passes" all Ruling
Justly indicators, its scores on each indicator declined between
2002 and 2005, with four of the six approaching failure. Post has
noted further deterioration in the GSL's performance in areas like
civil liberties and rule of law in 2006; these declines have not yet

registered in the Freedom House and World Bank Institute reports used by MCC. Further, these two sources do not include human rights, another mandated MCC criterion which significantly declined in 2006. Below are updates on several near or actually failing indicators:

RESPECT FOR HUMAN RIGHTS DECLINING

¶3. (SBU) Neither Freedom House nor the World Bank Institute, the only sources cited in the scorecard under the Ruling Justly criteria, explicitly identify human rights as a criteria within their evaluations. This makes it essential that the negative state of human rights in Sri Lanka be considered outside the scorecard mechanism.

¶4. (SBU) On December 21, 2006, the Ambassador hosted a roundtable discussion with human rights activists and civil society representatives. Participants complained of a climate of fear, a lack of accountability in government institutions such as the Human Rights Commission, limited judicial independence, an anti-NGO atmosphere, and threats to media freedom (see Ref F).

¶5. (U) Alan Rock, the UN Special Advisor on Children and Armed Conflict; ; Human Rights Watch; UNICEF; the UN Working Group on Forced or Involuntary Disappearances; and the ICRC all currently judge the GSL to be in gross violation of human rights. In a November 2006 statement, Rock reported that he had evidence that "certain elements of the government security forces are supporting, and sometimes participating in the forced recruitment of children by the Karuna faction." Further, Human Rights Watch investigations in eastern Sri Lanka found substantial evidence that the Sri Lankan military and police have been involved in abductions.

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¶6. (SBU) The December 2006 USAID Democracy and Governance Assessment Team found a substantial consensus of opinion that the democracy and governance environment has deteriorated since 2005, and that the speed of the decline has increased in recent months. Their specific findings were that: A) the last two years have seen an increase in human rights violations and a continuation of Sri Lanka's long-standing culture of impunity; B) there is shrinking space for political dissent in general and pro-peace, non-nationalist discourse in particular; and C) governance is poor and remains heavily centralized, and there are signs of increasing fragmentation of authority and public sector corruption. The single most immediate and actionable finding for the Mission was that the USG needs to initiate programs in rule of law and human rights, noting that Sri Lanka's respect for human rights has deteriorated sharply in the last two years. The team determined that "the US government can and should contribute to halting the slide and strengthening the protection of fundamental rights, not only through support to key human rights institutions but through the statement that such assistance makes about US concern for the rights situation."

RULE OF LAW, TRANSPARENCY AND ACCOUNTABILITY OF GOVERNMENT DECLINING

¶7. (SBU) The World Bank Institute notes a steady decline in Rule of Law from 2002 through 2005. Transparency International's ranking of Sri Lanka dropped from 67 out of 145 (53rd percentile) in 2004 to 84 out of 163 (48th percentile) in 2006. These declines can in part be attributed to the erosion of already limited checks and balances on executive authority, another finding of the USAID Democracy and Governance assessment team. For example, President Rajapaksa bypassed the Constitutional Council and directly appointed commissioners to independent agencies such as the Human Rights and Police Commissions established to prevent the politicization of public sector institutions and check the abuse of power. Not surprisingly these Presidential appointees have failed to demonstrate the leadership necessary to make these Commissions the independent checks that the Sri Lankan constitution intended them to be. Further, President Rajapaksa's extrajudicial powers and

immunities are far-reaching. In addition to being elected as President, Rajapaksa also appointed himself as Minister of Finance, Minister of Defense and Minister of Plan Implementation. Since the Sri Lankan Constitution grants immunity to the President from all parliamentary questioning, Rajapaksa does not need to defend the policies of those ministries before Parliament. Therefore, his actions involving government finance and defense, among other activities, are immune from review. Parliament does not debate the President's budget prior to taking a vote nor does it effectively question activities of the military. The President also has bypassed the Constitutional Council to appoint directly the head of the Human Rights Commission and other independent commissions, thereby undercutting the independence of the HRC.

18. (SBU) Appellate judges and the Chief Justice of the Supreme Court are appointed by the President, without a confirmation process. This power gives the President considerable influence over the senior judiciary. EconOff was told by a local attorney that, within the Supreme Court, only the Chief Justice's opinion counts significantly, since the other Supreme Court judges depend on him for continued employment, and almost invariably follow his opinion.

CIVIL LIBERTIES ERODING

19. (SBU) MCC considers within its Civil Liberties scoring the independence of the media and judiciary, protection from police terror and unjustified imprisonment, equality of opportunity and freedom to travel. Civil liberties are constrained for Sri Lankans in the North and East. For example, there has been no freedom of movement in Jaffna. Those who wish to leave the area must receive clearance from the military. Approximately 25,000 residents are now on a list awaiting clearance. In response to requests from the Ambassador and others, the GSL is making modest efforts to facilitate more travel. Residents of the Jaffna peninsula, while

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under complete military occupation and a strict curfew, still suffer widespread extra-judicial killings and disappearances, most of which occur during curfew when only the military and those groups working with it are allowed to operate. This indicates the collusion, if not the direct participation, of security forces in these human rights violations.

110. (SBU) Reporters Sans Frontieres and Freedom House report that attacks against the media have increased sharply. This conclusion was also confirmed by the International Press Institute to Sri Lanka. Media sources report that five media workers were killed in 2005, and seven in 2006. A foreign reporter left Sri Lanka in December after receiving death threats. Such threats were not common several years ago, but are becoming increasingly common, not only against reporters, but against others who question the culture of impunity increasingly prevalent in Sri Lanka. New wide-reaching anti-terrorism laws have resulted in media self-censorship, as well as the arrest and questioning of two journalists over the content of their reporting. Advertisers can be harassed as well: the Secretary of Defense (the President's brother), recently challenged

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the Port Authority Chairman's right to advertise in newspapers which do not always report in a pro-Government manner. A key recommendation of the USAID DG assessment is that the Mission support programs explicitly designed to protect journalists nationwide.

CORRUPTION INCREASING

111. (SBU) According to Transparency International, corruption is perceived as most pervasive in terms of political appointments to government institutions and in government procurement awards, as well as in high frequency/low value transactions. Corruption in high frequency/low value transactions makes government institutions inefficient and robs poor Sri Lankans, who can least afford bribes, of government services. Transparency International reports that

the judiciary and the police force are perceived to be the most corrupt institutions in the GSL.

¶12. (SBU) MCC's criteria include consideration of whether specific entities have been established to combat and control corruption. Although Sri Lanka boasts eight institutions with some sort of mandate to combat corruption, these institutions frequently interpret their mandates narrowly, inhibiting their effectiveness (Ref D). For example, the Commission to Investigate Allegations of Bribery or Corruption can only act if it receives a written complaint. Few Sri Lankans are willing to write such complaints due to fear of retaliation. Sri Lanka has no whistleblower protection law and a Right to Information Law has been stalled in Parliament since 2003. Additionally, death threats and other forms of harassment are considered common, to the point that if a case ever goes to trial, witnesses frequently do not appear in court. We recommend MCC visitors plan to meet with World Bank and Asia Development Bank representatives on the MCC's next visit in order to share perspectives on corruption and learn what specific measures the IBRD and ADB have put in place to guard against misuse and diversion of their project funds.

ECONOMIC FREEDOM: ALSO STARTING TO SLIDE

¶13. (SBU) Three of MCC's six Economic Freedom indicators show a decline in the 2006 scorecard. As with other indicators, these declines understate the worsening economic freedom in Sri Lanka, due to the time lag of the reports. Inflation shot up in 2006, running at nearly 20 percent, as the Central Bank accommodated the GSL's heavy defense spending by printing money. Regulatory quality continues to decline, as laws and regulations are frequently imposed without appropriate public debate or advance notice. Some laws are applied retroactively, to the detriment of commercial enterprises. Trade policy has become more protectionist.

INVESTING IN PEOPLE: LOW EXPENDITURES LIKELY TO HURT PERFORMANCE

¶14. (SBU) With the increased scale of the conflict and little

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official desire for peace, economic leaders are focusing on financing the conflict rather than investing in people (Refs B and C). While Embassy had vouched for Sri Lanka's performance on the MCC Investing in People indicator (Ref A), the recently announced budget increases military expenditures while neglecting health and education (Ref H). Our endorsement was based on Sri Lanka's relatively good outcomes, despite low spending. However underfunding will eventually result in worsening health and education outcomes and reflects GSL's weak commitment to these important services.

OTHER DONORS TAKING A HARDER LINE

¶15. (SBU) Both the Asian Development Bank and the World Bank have recently chosen not to proceed with investments sought by the GSL because of concerns that the government would not implement the projects effectively and equitably. These donors and MCC have compared notes and found that the GSL had proposed the same project for MCC funding. Further, Embassy reported in Ref E that Germany would reallocate half of its tsunami aid from Sri Lanka to Indonesia, and would not provide new programming to Sri Lanka without resumed negotiations between the GSL and LTTE. Germany's Minister of Overseas Development voiced strong displeasure over the resumption of the conflict, which he noted made it impossible for Germany to continue its programs in the northeast of the country.

¶16. (SBU) USAID is increasing spending on unanticipated programs, including protection of internally displaced persons, support for human rights, and support for the Independent International Group of Eminent Persons, a commission established to investigate human rights abuses in Sri Lanka. All of these new programs are caused by resumption of the conflict. As a result of these new commitments, USAID will be reorienting its entire program to be

conflict-oriented.

POSSIBLE INEQUITABLE BENEFITS OF AN MCC COMPACT

¶17. Some donors believe the Rajapaksa government is intentionally trying to steer aid and investment toward the Sinhala south while neglecting the north and east. When a U.S. demining NGO registered recently with the GSL, it was asked if it would be willing to move its dairy development project from the northern city of Jaffna to the predominantly Sinhalese area of Anuradhapura (Ref I). The increased fighting exacerbates this trend, as development work is hampered in conflict zones. Under current conditions, it would be unsafe for MCC or its contractors to try to work in conflict areas in the north and east. Yet a main goal of an MCC Compact should be transformation of the entire Sri Lankan economy, not just the Sinhala majority areas. Entering into a Compact that would result in MCC resources being channeled disproportionately to peaceful areas could exacerbate ethnic inequities and fuel the conflict.

COMMENT AND RECOMMENDATION

¶18. (SBU) The Mission's Country Team views the government's increasingly tarnished human rights record, lack of fiscal discipline, increasing corruption, culture of impunity, intimidation of the press, and reversion to open conflict as developments that undermine Sri Lanka's MCC goals and qualifications. Post therefore recommends that MCC warn the GSL that its poor recent performance on ruling justly, investing in people, and economic freedom could jeopardize Sri Lanka's MCC eligibility, and urge the GSL to take rapid action to rectify these so a compact can be concluded as soon as possible. The resumption of sustained peace negotiations would help significantly diminish human rights violations, as will the expected start of work by the Commission of Inquiry appointed by the President to work with international observers, including former US Assistant Secretary Gene Dewey, to investigate key human rights problems and make appropriate recommendations. But, as the discussion above makes clear, progress on other indicators will also be necessary.

BLAKE